IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 178 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANEKBEN TULSIDAS - Appellant(s)
Versus
MAMLATDAR OF PORBANDAR - Defendant(s)

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Appearance :

MR YOGESH S LAKHANI for Appellant(s) : 1,
GOVERNMENT PLEADER for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 10/11/2006

ORAL JUDGMENT

1. The appeal had been admitted for hearing the parties on 6/12/1990, but unfortunately, the questions on which the

appeal was admitted, were not framed. Under the circumstances, I will take up both the questions which are projected as substantial questions of law by the appellant as substantial questions of law for the purpose of disposal of this appeal.

2. In the present matter the defendant – administrator of Sudamaji Mandir Trust had issued a notice to the plaintiff that the illegal construction made by the appellant if was not removed then the administrator would remove the same. Nothing was done despite the service of the notice, but the appellant choose to file this suit seeking a declaration that the notice issued by the respondent – Mamlatdar-cum-Managing Trustee / Secretary of the Managing Committee was illegal. The suit was contested tooth and nail by the respondent and it was submitted by him that without any authority either from the Managing Committee or under the law, the appellant has made certain constructions and such constructions are bad. The plaintiff also submitted that the Mamlatdar, Porbandar was not exercising his powers as Mamlatdar, but in fact, he was exercising his authority as Ex-officio Administrator of Sudama Mandir Trust.

3. After recording evidence and hearing the parties, the

learned trial court dismissed the suit and as the appeal proved futile, the appellant is before this Court.

4. Learned counsel for the appellant submits that from Exh. Nos.47 and 48 it would clearly appear that the trust has already taken a decision that if certain constructions for the purpose of residence are raised then there would be no objection. It is submitted that in light of the said resolution, if the plaintiff has raised construction of lavatory-cum-latrine, no illegality can be found in it. It is also submitted that though some of the other Pujaries have facility of latrine but as the said facility is not provided to the present appellant, under the circumstances, the appellant was compelled to make such construction.

5. Learned counsel for the respondent on the other-hand submitted that the action of the appellant is per-se illegal, contrary to law and Exh.47/48 do not authorise any licencee or person in possession to make or raise construction, but resolution authorises the Managing Committee itself to raise the construction.

6. I have gone through Exh.Nos.47 and 48. Exh.47 has nothing to do with such permission for construction, while Exh.48 – Resolution No.3 simply says that the Managing

Committee would be entitled to make residential constructions. If the Managing Committee does not give any authority to the appellant to raise the construction then the action of the appellant – plaintiff cannot be held to be valid. Resolution No.3 in Exh.48 simply says that at or near Rang-Mandap, any residential accommodation can be made for residence of Pujari. It does not authorise the appellant or any person in occupation to raise any construction. If that be so, then the action of the appellant is patently illegal and the Administrator was entitled to issue such notice. In case illegal construction is not demolished, then the Management / Trust would be entitled to remove such illegal construction to save the temple which has mythological and archaeological importance. The substantial questions of law framed by the appellant have to be answered in favour of the respondent. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. No costs. Let a decree be framed accordingly.

(R.S. GARG,J.)

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